

**IN THE HIGH COURT OF MALAYA AT PENANG
IN THE STATE OF PENANG, MALAYSIA
JUDICIAL REVIEW APPLICATION NO. PA-25-1-01/2023**

Di dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012

Dan

Di dalam perkara Seksyen 3 Akta Pengambilan Tanah 1960

Dan

Di dalam perkara Seksyen 14 Akta Pengambilan Tanah 1960

Dan

Di dalam perkara Artikel 13 Perlembagaan Persekutuan

Dan

Di dalam perkara Cadangan Pengambilan Tanah ke atas keseluruhan Tanah Yang Dikenali Sebagai Lot 1774 G.M. Mukim 09 Daerah Seberang Perai Selatan, Pulau Pinang Bagi Tujuan Awam di bawah Perenggan 3(1)(a) Akta Pengambilan Tanah 1960 [Akta 486] iaitu Menaik Taraf Jambatan FT001/724/5 Merentasi Sungai Kerian Dan Membina Jejambat Merentasi Persimpangan Jalan Persekutuan Ke Jalan Transkrian FT001/FT283

Between

CHIN LAK MOTOR SDN BHD

... Applicant

And

1. PENTADBIR TANAH DAN DAERAH SEBERANG PERAI SELATAN
2. KETUA SETIAUSAHA, KEMENTERIAN KERJA RAYA, MALAYSIA
3. PENGARAH JABATAN KERJA RAYA PULAU PINANG



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... Respondents

Heard together with

**IN THE HIGH COURT OF MALAYA AT PENANG
IN THE STATE OF PENANG, MALAYSIA
JUDICIAL REVIEW APPLICATION NO. PA-25-2-01/2023**

Di dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012

Dan

Di dalam perkara Seksyen 3 Akta Pengambilan Tanah 1960

Dan

Di dalam perkara Seksyen 14 Akta Pengambilan Tanah 1960

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Between

CHEW AUTOMOBILE SDN BHD

... Applicant

And



1. PENTADBIR TANAH DAN DAERAH SEBERANG PERAI SELATAN
 2. KETUA SETIAUSAHA, KEMENTERIAN KERJA RAYA, MALAYSIA
 3. PENGARAH JABATAN KERJA RAYA PULAU PINANG
- ... Respondents

GROUNDS OF DECISION

Introduction

1. This is a judicial review application dated 13.1.2023 to obtain an order of certiorari to quash a compensation award given on 15.12.2022 by the Land Administrator (“**Award**”). The Award was given in connection with the acquisition of a land known as Geran Mukim, Lot 1774, Mukim 09, Daerah Seberang Perai Selatan, Penang (“**Land**”).
2. There are 2 applications before me. Namely:
 - (a) Judicial Review Application No. PA-25-1-01/2023 (“**JR 1**”), where the applicant is the owner of the Land; and
 - (b) Judicial Review Application No. PA-25-2-01/2023 (“**JR 2**”), where the applicant is the tenant of a building situated on the Land. JR 2 was transferred from another court to this court to be heard together with JR 1, pursuant to an Order of Court dated 11.4.2023.
3. Both the applicants in JR 1 and JR 2 are collectively referred to as the “**Applicant**”. The Applicant prayed for the following:
 - (a) An order of certiorari to annul and cancel the Award;
 - (b) An order of mandamus for the 1st Respondent to conduct a fresh inquiry under the Land Acquisition Act 1960 before a new Land Administrator; and
 - (c) An order of mandamus that the 1st Respondent issues a compensation award in a new Form H.
4. On 28.6.2023, I dismissed both judicial review applications. Here are the grounds of my decision.

Background facts

5. On 15.2.2022, the Malaysian Ministry of Public Works submitted an application to acquire the Land for public purposes under section 3(1)(a)



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of the Land Acquisition Act 1960 (“LAA”). Namely for the Bridge Upgrading Project FT001/724/5 Crossing the Kerian River and Constructing a Viaduct Across the Intersection of Federal Road to Transkrian Road FT001/FT283.

6. On 23.2.2022, the Penang State Authority approved the acquisition of the Land for public purposes under section 3(1)(a) of the LAA for the implementation of the aforesaid project.

7. On 29.3.2022, in accordance with the said approval, the “Notice that Land is Likely to be Taken” under section 4 of the LAA was gazetted on the Land, which was published through Notification in the Penang State Government Gazette No. 454 dated 14.4.2022.

8. Further to that, on 29.3.2022, a “Declaration of Proposed Acquisition” under section 8 of the LAA was gazetted on the Land through Notification in the Penang State Government Gazette No. 455 dated 14.4.2022. Based on the said Gazette, the estimated area of the Land that will be acquired is 0.2726 square meters out of the total area of the Land that is 13000.5056 square meters.

9. Subsequent to that, on 31.5.2022, a Notice for the Correction of the Notice in the Penang State Government Gazette No. 455 dated 14.4.2022 was gazetted and published through Notification in the Penang State Government Gazette No. 667 dated 9.6.2022. The notification, among other things, involves a correction to the estimated area of the Land that will be taken from 0.2726 square meters to 2726 square meters (**“Part of the Land”**).

10. On 22.6.2022, a Notice of Inquiry to hear all compensation claims regarding all interests arising in relation to the acquisition of the Part of the Land (Form E) under section 10 of the LAA was issued to the Applicant. Based on the Form E, the Applicant, among others, was informed of the following:

- (a) The inquiry on the acquisition of the Part of the Land will be held on 2.8.2022 at 9.30 am at the prescribed address stated in the Notice; and
- (b) Everyone who has an interest in the Part of the Land whether as a registered owner, resident, lessee, mortgagee or otherwise was required to attend the inquiry as scheduled.

11. On 2.8.2022, the said inquiry was conducted with the presence of persons who claim to have an interest in the Part of Land, including the



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Applicant. Following thereon, the re-inquiry of the Part of the Land was scheduled on 15.12.2022.

12. On 15.12.2022, the Land Administrator conducted an inquiry on the acquisition of the Part of the Land with the attendance of the persons who claim to have an interest in the Part of the Land, including the Applicant.

13. Based on the inquiry:

- (a) The inquiry on taking the Part of the Land has been heard in conjunction with the inquiry of the land acquisition of Lot No. 20789 GM Mukim 09 Seberang Perai Selatan District, Penang owned by the Applicant and involved in the acquisition of the aforesaid project as described in the Penang State Government Gazette No. 454 dated 14.4.2022;
- (b) Several buildings used as Proton Sales and Service Centers and Truck Workshops have been erected on the Land and the aforesaid Lot 20789 (collectively the "**Building**"). The Applicant in JR 1 is the owner of the Truck Workshops. The Applicant in JR 2 is the owner of the Proton Sales and Service Centers, and has rented one of the buildings on that Land for that purpose;
- (c) The acquisition involves a part only of the Building. However, the Applicant demanded that the Building be taken as a whole under section 34 of the LAA for the factors described during the inquiry. The Applicant contends that the Land Administrator has a duty to refer the claim to the High Court if the claim for the acquisition of the whole Building cannot be agreed upon;
- (d) The 1st Respondent was of the opinion that:
 - (i) The acquisition only involves the Part of the Land that does not in any way involve the main structure of the Building. Directly, the overall function of the Building is not under any circumstances affected by the acquisition of the Part of the Land;
 - (ii) The structures of the Building involved in the alignment of the acquisition on the Part of the Land is separate from the main structure of the Building, and was illegally constructed; and
 - (iii) Therefore, the main structure and the separate structure from the main structure of the Building is not included in the meaning of "building" under section 34 of the LAA. Hence, a reference to the High Court is not justified.

14. Thus on 15.12.2022, based on the principles in the First Schedule of the LAA, the 1st Respondent has given the Award orally as follows:

- (a) The reasonable and adequate value of the land is RM430 per square meter;



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- (b) The Part of the Land involved in the acquisition of the Project is an area of 2726 square meters;
- (c) Therefore, the compensation for the value of taking the Part of the Land that was decided to be given to the Applicant amounts to RM1,172,180; and
- (d) Other costs are IM Global Property Consultant's appraiser fees amounting to RM3,913.23.

15. On 14.2.2023, the Form H for the acquisition of the Part of the Land was issued to the Applicant.

16. Being dissatisfied with the Award, the Applicant proceeded to file this judicial review application.

The applicable legal principles and issues

17. The remedy of judicial review is not concerned with reviewing the merits of the decision in which the application for judicial review is made. Instead, the remedy of judicial review is primarily a review of the decision making process. In performing this role, the court is sitting in its supervisory jurisdiction and not in its appellate jurisdiction. The court will not interfere with the proper exercise of any power or discretion which has been conferred on public authority.

18. In *Ahmad Saman v Kerajaan Negeri Kedah* [2004] 1 CLJ 211 at 215, the Court of Appeal held that land acquisition may be challenged on any of the following grounds:

- (a) that the acquiring authority has misconstrued its statutory powers;
- (b) that the purpose stated in the Declaration does not come within section 3 of the LAA;
- (c) where it can be shown that the acquiring authority has acted in bad faith; or
- (d) that the acquiring authority has acted contrary to the law.

19. Order 53 rule 3(2) of the Rules of Court 2012 reads:

"An application for leave must be made ex parte to a Judge in Chambers and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on."



S/N zfQjOvxPkaZdUPQ2vLLZQ

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20. It has been held that no grounds should be relied upon at the hearing of the judicial review application except the grounds set out in the Statement. The Supreme Court in *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 CLJ 333 at 340 held:

"We must also from the outset point out that under O. 53 r. 3(1) no grounds should be relied upon or any reliefs sought at the hearing of the motion or summons except the grounds and reliefs set out in the statement, and his Lordship was right in refusing to consider other grounds ..."

21. From the Statement in the instant case, the Applicant challenges the legality of the Award based on the following grounds:

- (a) The 1st Respondent has failed to take into account the relevant facts in making the Award, and the Award was based on the wrong legal procedure;
- (b) Vide the Award, the 1st Respondent has only given compensation for a Part of the Land. However, the 1st Respondent failed to consider that the whole Land should be acquired as by acquiring a Part of the Land, there has been a total impairment on the Land;
- (c) No compensation has been awarded for the Building together with the structures;
- (d) The 1st Respondent has failed to comply with section 34 of the LAA, where the 1st Respondent must refer the issues raised by the Applicant to the High Court for determination.

Section 34 of the Land Acquisition Act 1960

22. Section 34 of the LAA reads:

"Acquisition of part of a building

- (1) This Act shall not be applied for the purpose of acquiring a part only of a building if -
 - (a) such part is reasonably required for full and unimpaired use of the building; or
 - (b) the person interested in such building desires that the whole thereof shall be acquired:

Provided that such person may at any time before the Land Administrator has made an award under section 14 by notice in writing withdraw or modify his expressed desire that the whole of such building shall be so acquired.



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- (2) If any question arises as to whether any land proposed to be taken under this Act does or does not form part of a building which is reasonably required for the full and unimpaired use thereof within the meaning of this section, such acquisition shall be determined by agreement between the parties; and in default of any such agreement, the Land Administrator -
- shall refer the determination of such question to the Court; and
 - shall not take possession of such land until after such question has been determined.”

23. Section 2(1) of the LAA defines the word “building” to mean:

“building” includes any house, hut, shed or roofed enclosure, whether used for the purpose of human habitation or otherwise, any wall, fence, platform, sewerage system, underground tank, hoarding, dock, jetty, landing-stage, swimming pool, bridge, railway line, and any other structure, support or foundation related to the building

The 1st Respondent did not misconstrue his statutory power and did not act contrary to the law when he refused to refer the issue concerning the acquisition of a part of the Building and a Part of the Land to the High Court for determination pursuant to section 34 of the Land Acquisition Act 1960

24. It was deposed by the Applicant that:

- “Responden telah menurunkan awad secara lisan untuk harta tanah tersebut pada 15.12.2022.”;
- “Responden hanya telah memberi pampasan bagi sebahagian tanah yang diambil tersebut.”;
- “Responden tidak memberikan sebarang pampasan langsung untuk struktur - struktur yang terlibat seperti pagar, tempat meletakkan kenderaan, halaman bersimen dan lain - lain walaupun sijil kelayakan untuk menduduki dikeluarkan oleh Majlis Perbandaran Seberang Perai dan Pemohon telah membayar fi lesen sebanyak RM710.00 setahun untuk Bengkel Servis Mengecat Dan Membalik Kenderaan Ringan & Berat.” (the Applicant in JR 1);
- “Responden tidak memberikan sebarang pampasan langsung untuk struktur - struktur yang terlibat seperti pagar, tempat meletakkan kenderaan, halaman bersimen dan lain - lain walaupun sementara permohonan untuk kebenaran merancang diluluskan Majlis Bandaran Seberang Perai telah telah memberi lesen sementara untuk mendirikan Bangunan jualan servis sementara Pemohon telah membayar fi lesen



sementara sebanyak RM2,439.00 setahun untuk mendirikan ‘Bengkel Jualan Servis Kereta’ serta Pejabat Proton.” (the Applicant in JR 2);

- (e) “Saya menyatakan bahawa akibat keputusan Responden, saya tidak boleh bermiaga di tempat itu sebab jejantas bertingkat (flyover) yang menghalang pemandangan kepada pusat pameran serta ruang tidak mencukupi untuk kami berundur ke belakang kerana rizab sungai. Peguam kami telah memohon untuk semua tanah dan bangunan diambil di bawah Seksyen 34 Akta Pengambilan Tanah 1960. Pentadbir Tanah Encik Mohd Syukri bin Mohd Mokhtar enggan berbuat demikian. Peguam kami Dato Ram Pillai telah menyuruh Pentadbir Tanah Encik Mohd Syukri bin Mohd Mokhtar untuk merujuk perkara ini kepada Mahkamah Tinggi kerana Pihak JKR dan Pentadbir Tanah tidak setuju dengan cadangan merujuk ke Mahkamah Tinggi di bawah Seksyen 34 Akta Pengambilan Tanah 1960”;
- (f) “Saya menyatakan bahawa Responden telah bertindak salah dengan pengambilan tanah bagi hanya sebahagian dari tanah tersebut dan Responden telah ingkar dalam tugasnya dengan tidak mempertimbangkan peruntukan Seksyen 34 Akta Pengambilan Tanah 1960 dan tindakan Responden dalam mengambil sebahagian tanah sahaja adalah bercanggah dengan peruntukan Seksyen 34 Akta Pengambilan Tanah 1960.”;
- (g) “Saya menyatakan bahawa dengan mengambil separuh bahagian tanah, telah wujud satu kemerosotan total (total impairment) ke atas tanah tersebut dan saya mengalami kerugian yang melampau.”
- (h) “Saya menyatakan bahawa Responden - Responden perlu memberi pampasan yang mencukupi dimana Majlis Bandaran Seberang Perai telah meluluskan bangunan / pejabat dan tempat servis untuk Proton.”;
- (i) “Saya menyatakan bahawa Responden telah gagal mengambil kira fakta - fakta yang relevan dalam membuat keputusan berdasarkan prinsip undang - undang yang salah. Anggapan JPH dan Responden Pertama adalah tidak betul. Untuk kutipan hasil Majlis Bandaran bangunan ini di anggap sah tetapi untuk pengambilan di anggap tidak sah.”; and
- (j) “Responden sepatutnya merujuk isu ini kepada Mahkamah Tinggi untuk memutuskan isu tersebut selarasnya dengan Seksyen 34 Akta Pengambilan Tanah 1960 jika beliau tidak bersetuju dengan cadangan Pemohon.”

25. The thrust of the Applicant’s case is that the Land Administrator does not understand the effect of section 34 of the LAA. Where if there is a dispute as to whether or not the acquisition is affected by section 34 of the LAA, the Land Administrator does not have the authority to make any decision and must refer the determination of such question to the High Court.

26. However, I consider the Applicant's contention that the acquisition of the Building must be referred to the High Court for determination under section 34 of the LAA to be misconceived. This is because the Building or part thereof acquired in this land acquisition was illegally constructed.

27. From the issue document of title of the Land, it is indisputable that the Land is not subject to any category of land use under the National Land Code (Revised 2020) [Act 828] ("NLC"). The Land has been owned on 7.6.1904, which is before the NLC came into effect on 1.1.1966.

28. Thus, the Land is subject to section 53 of the NLC which reads:

"Conditions affecting use of lands alienated before commencement until category of land use imposed

- (1) This section applies to all land alienated before the commencement of this Act other than land which, immediately before that commencement, is subject to an express condition requiring its use for a particular purpose.
- (2) All land to which this section applies which is at the commencement of this Act -
 - (a) country land; or
 - (b) town or village land held under Land Office title,

shall become subject at that commencement to an implied condition that it shall be used for agricultural purposes only:

Provided that this condition -

- (i) shall not prevent -
 - (a) the use of any part of the land for any purpose for which it could (under section 115) be lawfully used if it were subject instead to the category "agriculture"; or
 - (b) the continued use of any part thereof for any industrial purpose for which it was lawfully used immediately before the commencement of this Act; and
- (ii) shall not apply to any part of the land which is occupied by or in conjunction with -
 - (a) any building lawfully erected before that commencement; or



- (b) any building erected after that commencement, the erection of which would (under section 115) be lawful if the land were subject instead to the category "agriculture".
- (3) All other land to which this section applies shall become subject at the commencement of this Act to an implied condition that it shall be used neither for agricultural nor for industrial purposes:
- Provided that this condition -
- (i) shall not prevent the continued use of any part of the land for any agricultural or industrial purpose for which it was lawfully used immediately before the commencement of this Act; and
 - (ii) shall not apply to any part of the land which is occupied by or in conjunction with -
 - (a) any building lawfully erected before that commencement; or
 - (b) any building erected after that commencement, the erection of which would (under section 116) be lawful if the land were subject instead to the category "building".
- (4) No order under subsection 129(4) or (5) declaring land forfeit to the State Authority shall have effect with respect to any land for breach of any condition to which it is subject by virtue of this section except upon payment of such compensation as may be agreed or determined under section 434."

29. Notably, section 53(2) of the NLC provides that all country, town or village land held under Land Office title shall be subject to an implied condition that it shall be used for agricultural purposes only.

30. During the inquiry, the material facts are as follows:

- (a) The Applicant had filed an application to change the land use category of the Land from "Agriculture" to "Industrial";
- (b) However, the Seberang Perai Selatan District Land Office by letter dated 28.9.2022 to the Department of the Director General of Land and Mines, Penang confirmed that the Land is still "Agriculture";
- (c) The Applicant's application to change the land use category of the Land from "Agriculture" to "Industrial", which was approved on 15.3.2006 by the Penang State Authority, had been cancelled because the Applicant did not pay the stipulated payment within the specified period;
- (d) The Seberang Perai City Council through a letter dated 6.10.2022 to the Department of the Director General of Land and Mines, Penang informed



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that the Applicant had submitted an application for Planning Permission in relation to the Land, which was approved; and

- (e) However, the said approval has been cancelled, as there was no further action from the Applicant. The Seberang Perai City Council vide the same letter also confirmed that there is no Building Plan which had been applied for or ever approved for the Land.

31. In view of the above facts, the Land is subject to the land use category of "Agricultural" purpose. Thus, the Land is subject to the implied conditions as prescribed under section 115 of the NLC which reads:

"Implied conditions affecting land subject to the category "agriculture"

(1) Where any alienated land is subject by virtue of any provision of this Act to the category "agriculture", the following implied conditions shall, subject to subsection (3), apply thereto:

- (a) that no building shall be erected on the land other than a building or buildings to be used for one or more of the purposes specified or referred to in subsection (4);

...

(4) The purposes referred to in paragraph (1)(a) are the following:

- (a) the purposes of a dwelling house for the proprietor of the land or any other person lawfully in occupation thereof; or for the servants of, or any persons employed for agricultural purposes by, the proprietor or any other such person:

Provided that the dwelling house for the proprietor of the land or any other person lawfully in occupation thereof shall not occupy more than one-fifth of the whole area of the land or two hectares, whichever is the lesser;

- (b) the purposes of agriculture;

- (c) the purpose of extracting or processing raw material from any agricultural produce of such land;

- (d) the purpose of preparing for distribution any such material or produce, or any honey-bees, livestock or reptiles kept or bred on such land, or the produce of such livestock or aquaculture on such land;

- (e) the purposes of providing educational, medical, sanitary or other welfare facilities, including (so far as they are provided primarily for use by persons employed on the land) facilities for the purchase of goods and other commodities;



- (f) any purpose which the State Authority may prescribe for the purposes of this section by rules under section 14;
- (g) any purpose which the State Authority may think fit to authorize in the circumstances of any particular case;
- (h) any purpose incidental to a purpose falling within any of the preceding paragraphs."

32. The Applicant contends that the Seberang Perai Town Council has approved the Building. The Seberang Perai Town Council has granted a temporary licence to erect the Building temporarily, and the Applicant has paid a fee for the Building to the Seberang Perai Town Council. The fee paid is based on commercial and not agricultural.

33. The Applicant deposed as follows:

- (a) "Majlis Bandaraya Seberang Perai adalah Badan yang ditubuhkan di bawah Akta Kerajaan Tempatan dan mempunyai kuasa - kuasa statutori di bawah Akta Perancang Bandar dan Desa 1974 untuk menentukan samada bangunan yang diberi lesen untuk bangunan yang didirikan samada kekal atau sementara."; and
- (b) "Saya dinasihati dan percayai Majlis Bandaraya Seberang Perai (MBSP) adalah badan yang tunggal (sole authority) untuk menentukan samada kesahihan bangunan dari segi undang - undang kerana Seberang Perai Selatan adalah di bawah kawalan mereka dan bukan pihak lain."

34. However, I am of the opinion that the issuance of the temporary licence does not prove nor is conclusive evidence that the Building is legally constructed on the Land under the law.

35. In *Cheok Len Thai (F) And Chung Yin Ho @ Choong Chye Yoon (F)* (as representatives for *Hew Yoon Choy, Hew Kee Yin, Hew Moy Nyok Chong Foong Ying, Yong Len Choi and Suntat Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2009] 1 LNS 1333*, the High Court discussed section 53 of the NLC and came to the following conclusion:

"The applicants contend that it would be an absurdity for the scheduled land to be considered agricultural land when it is situated in the midst of commercial development. The fact of being surrounded by commercial development is not determinative of the issue of category of land use. This issue is to be determined by reference to the law and not to the factual matrix that exists. If the applicants wish to develop the land for commercial purpose, they could do so upon conversion and payment of the required premium.

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Be that as it may, I do not think the principle of acquiescence can have any application on the issue of category of land use. The amount of quit rent imposed was based on the commercial activities on the scheduled land. It cannot have any implication on the category of land use as that is determined by the NLC. Nevertheless, it may serve as a strong indicator for the potential of the land for commercial activities as well as conversion of the category of land use if there was such an application for it. The applicant's contention in this regard is therefore without merit.

36. As mentioned earlier, the Building erected on the Land was used as Proton Sales and Service Centers and Truck Workshops. This is inconsistent with and contradict the implied conditions provided under section 115 of the NLC. Therefore, the Building erected on the Land is illegal.

37. The First Schedule of the LAA sets out the "Principles relating to the determination of compensation". Under paragraph 1(3A) thereof, the Land Administrator must disregard the value of any building which was erected contrary to the land use category.

38. Paragraph 1(3A), First Schedule of the LAA reads:

"Principles relating to the determination of compensation

1. Market value

...
(3A) The value of any building on any land to be acquired shall be **disregarded** if that **building is not permitted** by virtue of -

- (a) the **category of land use**; or
- (b) an express or implied condition or restriction,

to which the land is subject or deemed to be subject under the State land law.

39. In *Cheok Len Thai* (supra), the High Court decided as follows:

*"It would therefore appear that the tenants' claim is based on illegal buildings having been erected without approval and contrary to land use. In *Pentadbir Tanah Daerah Petaling v. Swee Lin Sdn Bhd* [1999] 3 CLJ 577, the Court of Appeal rejected the applicant's claim for compensation for a warehouse on the subject property for which planning permission for its construction had not been obtained. The land in question was country land subject to an express condition for agriculture only. The Court of Appeal applied the long held principle that a litigant ought not to benefit from its wrong. The Court held that a landowner who erected a building on his land contrary to law ought not to receive any benefit from it from an acquiring authority under the LAA 1960."*



40. The Court of Appeal in *Pentadbir Tanah Daerah Petaling Jaya v Swee Lin Sdn Bhd* [1999] 3 MLJ 489 at 492 decided as follows:

“... had argued that the warehouse, in the admitted absence of planning permission, was illegally located on the subject property. The respondent, he argues, ought not to benefit from his own wrong. He has further submitted that para 1(3)(b) of the First Schedule when properly interpreted excludes from consideration a building built unlawfully upon land that is being acquired. I am in full agreement with his submission,

Quite apart from the construction of para 1(3)(b) of the First Schedule, there is a principle of great antiquity that a litigant ought not to benefit from its own wrong.

*...
But as I have said, the principle is of universal application. In the context of the present case, that principle produces the following result. A land owner who has erected a building on his land contrary to law ought not to receive any benefit from it from an acquiring authority under the Act.”*

41. In my view, section 34 of the LAA must be read together and harmoniously with the other provisions of the LAA. This will promote the purpose or object underlying the LAA. (See section 17A of the Interpretation Acts 1948 and 1967).

42. With that in mind, my opinion is as follows:

- (a) Section 34 of the LAA deals specifically with a situation where a part only of a building is to be acquired. A question which may arise then is whether such part is reasonably required for full and unimpaired use of the building;
- (b) The determination of such a question will in turn determine the measurement of the building to be acquired i.e. whether in part or the whole. Such determination will have implication on the valuation of the building and the compensation that is to be paid for the acquisition in accordance with the First Schedule of the LAA;
- (c) The only question for determination by the High Court, upon reference by the Land Administrator under section 34 of the LAA, is whether the building should be acquired in part or the whole;
- (d) However, the building in question has to be a building that is legally constructed in the first place such that it can be considered for compensation;
- (e) In the present case, the Building has been illegally constructed. That is to say, the Building is not permitted by virtue of the land use category of the Land. Accordingly, the value of the Building must be disregarded;



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- (f) Since the Applicant is not entitled to receive any benefit from the Building in the acquisition, whether the Building should be acquired in part or the whole is not relevant as it will not affect the value of the compensation for the acquisition;
- (g) As such, the question of referring the issue to the High Court for determination under section 34 of the LAA does not arise.

43. It is my conclusion that the Building that has been illegally constructed does not raise a need for a reference to be made to the High Court under section 34 of the LAA.

44. The issue raised by the Applicant for the acquisition of the whole of the Land is pursuant to the contention that the Building shall be acquired as a whole and not a part only of the Building. This issue likewise does not warrant a reference to the High Court for determination under section 34 of the LAA.

45. I find that the 1st Respondent has not misconstrued his statutory power or acted contrary to the law when he refused to refer the issue concerning the acquisition of a part of the Building and a Part of the Land to the High Court for determination pursuant to section 34 of the LAA.

Conclusion

46. The Applicant has failed to show that the 1st Respondent's decision-making process in giving the Award is tainted with illegality, irrationality, unreasonableness or procedural impropriety. Hence, interference by this reviewing court is unwarranted. I therefore dismissed both judicial review applications. I ordered each Applicant to pay costs of RM3,000 to the Respondents.

Dated 17 July 2023



Quay Chew Soon
Judge
High Court of Malaya, Penang
Civil Division NCvC 1



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Cases cited

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Cheok Len Thai (F) And Chung Yin Ho @ Choong Chye Yoon (F) (as representatives for Hew Yoon Choy, Hew Kee Yin, Hew Moy Nyok Chong Foong Ying, Yong Len Choi and Suntat Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2009] 1 LNS 1333
Pentadbir Tanah Daerah Petaling Jaya v Swee Lin Sdn Bhd [1999] 3 MLJ 489

Legislation cited

Order 53 of the Rules of Court 2012
Sections 2, 3, 4, 8, 10, 34 and the First Schedule of the Land Acquisition Act 1960
Sections 53 and 115 of the National Land Code (Revised 2020)
Section 17A of the Interpretation Acts 1948 and 1967





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